



The Commonwealth of Massachusetts

Office of the Commissioner of Banks

One South Station

Boston, Massachusetts 02110

JANE SWIFT
GOVERNOR

THOMAS J. CURRY
COMMISSIONER

December 18, 2001

David Lee Valdina, Esq.
c/o United Insurance Agency, Inc.
P. O. Box 1013
Buzzards Bay, MA 02532-1013

Dear Mr. Valdina:

This letter is written in response to your correspondence of December 11, 2001 relative to a client of yours who had received a letter from Cape Cod Bank & Trust Company (the "Bank") notifying its business customers of the imposition of a \$1.00 "convenience fee" to cash checks for non-customers of the Bank. The Bank is a national bank regulated by the Office of the Comptroller of the Currency.

As a general matter, the relationship between a bank and its customers with respect to deposit accounts is fundamentally a contractual matter. Although not applicable to the Bank, G. L. c. 167D, section 2, governing state-chartered banks, states that a bank may receive deposits "...upon such terms and conditions as may be agreed upon between the depositor and the bank...".

It is common procedure within the industry for a bank to implement a policy not to cash checks presented by individuals who have no account relationship with the bank. There is, however, a provision of law, which requires banks to implement a procedure to ensure that certain retirement benefit checks are cashed regardless of whether the retiree has an account with the bank.¹ In most other circumstances, a bank is under no general obligation to cash checks and may implement terms and conditions applicable to its check cashing procedures. Accordingly, the imposition of a \$1.00 "convenience fee" by the Bank to cash checks of non-customers would not be expressly prohibited by any provisions of state existing banking law.

Where it appears your client's interest in this matter may arise from the impact this policy would have on the cashing of employee payroll checks, you may wish to review the enclosed copy of G. L. c. 149, section 148, which contains a provision requiring employers paying wages by check or draft to provide reasonable facilities for cashing such checks at a bank or elsewhere,

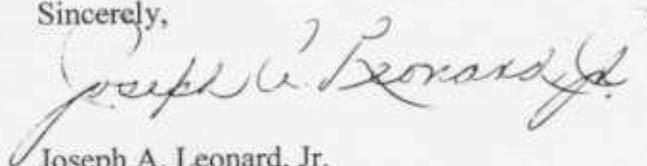
¹ See G. L. c. 167, s. 46.



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without charge to the employee. Your client may wish to inform the Bank of this statute and your client's potential liability as an employer, if it fails to arrange to have its employees' payroll checks cashed without charge. You or your client also may want to inform the Bank that this new fee may adversely effect the continued value of the Bank's services for it and other commercial customers with employee payrolls subject to G. L. c. 149, section 148. This statute is under the jurisdiction of the Commonwealth's Office of the Attorney General, Labor and Industries Division. The Labor and Industries Division can be reached at (617) 727-3465.

Sincerely,



Joseph A. Leonard, Jr.
Deputy Commissioner of Banks
And General Counsel

cc Stephen B. Lawson
President and CEO
Cape Cod Bank & Trust

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the pay roll or other records or documents relating to the enforcement of 12
 said sections, or who falsifies such records or documents or any state- 13
 ment which he is required by the attorney general or said representative, 14
 acting under authority of said sections, to make, or who otherwise vio- 15
 lates any provision of said sections or any provision of his permit, shall 16
 be punished by a fine of not less than three hundred nor more than three 17
 thousand dollars, or by imprisonment for not more than two months, or 18
 both. 19

149:147H. Educational and philanthropic organizations; homework performed under supervision of commission for the blind.

Section 147H. The provisions of sections one hundred and forty-three 1
 to one hundred and forty-seven G, inclusive, shall not apply to organiza- 2
 tions incorporated in the commonwealth for educational or philanthropic 3
 purposes, or to homework performed under the supervision of the Mas- 4
 sachusetts commission for the blind. Persons doing work for such orga- 5
 nizations shall not be required to have a certificate to permit them to do 6
 such work. 7

WEEKLY PAYMENT OF WAGES.

149:148. Payment of wages; commissions; exemption by contract; persons deemed employers; provision for cashing check or draft; violation of statute.

Section 148. Every person having employees in his service shall pay 1
 weekly or bi-weekly each such employee the wages earned by him to 2
 within six days of the termination of the pay period during which the 3
 wages were earned if employed for five or six days in a calendar week, or 4
 to within seven days of the termination of the pay period during which 5
 the wages were earned if such employee is employed seven days in a cal- 6
 endar week, or in the case of an employee who has worked for a period 7
 of less than five days, hereinafter called a casual employee, shall, within 8
 seven days after the termination of such period, pay the wages earned by 9
 such casual employee during such period, but any employee leaving his 10
 employment shall be paid in full on the following regular pay day, and, in 11
 the absence of a regular pay day, on the following Saturday; and any em- 12
 ployee discharged from such employment shall be paid in full on the day 13
 of his discharge, or in Boston as soon as the laws requiring pay rolls, 14
 bills and accounts to be certified shall have been complied with; and the 15
 commonwealth, its departments, officers, boards and commissions shall 16
 so pay every mechanic, workman and laborer employed by it or them, 17
 and every person employed in any other capacity by it or them in any 18
 penal or charitable institution, and every county and city shall so pay ev- 19
 ery employee engaged in its business the wages or salary earned by him, 20
 unless such mechanic, workman, laborer or employee requests in writing 21
 to be paid in a different manner; and every town shall so pay each em- 22

ployee engaged in its business if so required by him; but an employee 23
 absent from his regular place of labor at a time fixed for payment shall 24
 be paid thereafter on demand; provided, however, that the department 25
 of telecommunications and energy, after hearing, may authorize a rail- 26
 road corporation or a parlor or sleeping car corporation to pay the wages 27
 of any of its employees less frequently than weekly, if such employees 28
 prefer less frequent payments, and if their interests and the interests of 29
 the public will not suffer thereby; and provided, further, that employees 30
 engaged in a bona fide executive, administrative or professional capacity 31
 as determined by the attorney general and employees whose salaries are 32
 regularly paid on a weekly basis or at a weekly rate for a work week of 33
 substantially the same number of hours from week to week may be paid 34
 bi-weekly or semi-monthly unless such employee elects at his own option 35
 to be paid monthly; and provided, further, that employees engaged in ag- 36
 ricultural work may be paid their wages monthly; in either case, how- 37
 ever, failure by a railroad corporation or a parlor or sleeping car 38
 corporation to pay its employees their wages as authorized by the said 39
 department, or by an employer of employees engaged in agricultural 40
 work to pay monthly the wages of his or her employees, shall be deemed 41
 a violation of this section; and provided, further, that an employer may 42
 make payment of wages prior to the time that they are required to be 43
 paid under the provisions of this section, and such wages together with 44
 any wages already earned and due under this section, if any, may be paid 45
 weekly, bi-weekly, or semi-monthly to a salaried employee, but in no 46
 event shall wages remain unpaid by an employer for more than six days 47
 from the termination of the pay period in which such wages were earned 48
 by the employee. For the purposes of this section the words salaried 49
 employee shall mean any employee whose remuneration is on a weekly, 50
 bi-weekly, semi-monthly, monthly or annual basis, even though deductions 51
 or increases may be made in a particular pay period. The word "wages" 52
 shall include any holiday or vacation payments due an employee under an 53
 oral or written agreement. An employer, when paying an employee his 54
 wage, shall furnish to such employee a suitable pay slip, check stub or 55
 envelope showing the name of the employer, the name of the employee, 56
 the day, month, year, number of hours worked, and hourly rate, and the 57
 amounts of deductions or increases made for the pay period. 58

Every railroad corporation shall furnish each employee with a state- 59
 ment accompanying each payment of wages listing current accrued total 60
 earnings and taxes and shall also furnish said employee with each such 61
 payment a listing of his daily wages and the method used to compute 62
 such wages. 63

This section shall apply, so far as apt, to the payment of commissions 64
 when the amount of such commissions, less allowable or authorized de- 65
 ductions, has been definitely determined and has become due and pay- 66

able to such employee, and commissions so determined and due such employees shall be subject to the provisions of section one hundred and fifty. 67
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This section shall not apply to an employee of a hospital which is supported in part by contributions from the commonwealth or from any city or town, nor to an employee of an incorporated hospital which provides treatment to patients free of charge, or which is conducted as a public charity, unless such employee requests such hospital to pay him weekly. 70
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This section shall not apply to an employee of a co-operative association if he is a shareholder therein, unless he requests such association to pay him weekly, nor to casual employees as hereinbefore defined employed by the commonwealth or by any county, city or town. 75
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No person shall by a special contract with an employee or by any other means exempt himself from this section or from section one hundred and fifty. The president and treasurer of a corporation and any officers or agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation within the meaning of this section. Every public officer whose duty it is to pay money, approve, audit or verify pay rolls, or perform any other official act relative to payment of any public employees, shall be deemed to be an employer of such employees, and shall be responsible under this section for any failure to perform his official duty relative to the payment of their wages or salaries, unless he is prevented from performing the same through no fault on his part. 79
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Any employer paying wages to an employee by check or draft shall provide for such employee such facilities for the cashing of such check or draft at a bank or elsewhere, without charge by deduction from the face amount thereof or otherwise, as shall be deemed by the attorney general to be reasonable. The state treasurer may in his discretion in writing exempt himself and any other public officer from the provisions of this paragraph. 91
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An employer paying his employees on a weekly basis on July first, nineteen hundred and ninety-two shall, prior to paying said employees on a bi-weekly basis, provide each employee with written notice of such change at least ninety days in advance of the first such bi-weekly paycheck. 98
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Whoever violates this section shall be punished or shall be subject to a civil citation or order as provided in section 27C. 103
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149:148A. Employees seeking rights under provisions of this chapter; discharge or discrimination; punishment.

Section 148A. No employee shall be penalized by an employer in any way as a result of any action on the part of an employee to seek his or her rights under the wages and hours provisions of this chapter. 1
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